IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.420 OF 2005
ALONG WITH
CRIMINAL APPLICATION NO.421 OF 2005

H.M.G. Murthy & Anr. ...Petitioners.

V/s

State of Maharashtra
and anr. ...Respondents.

ALONG WITH
CRIMINAL APPLICATION NO.422 OF 2005

Topline Shoes Ltd and Anr. ...Petitioners.

V/s

State of Maharashtra and Anr. ...Respondents.

Mr. A.S. Khandeparkar for the petitioners.
Mr. A.G. Damle for respondent No.2.
Mr. D.P. Adsule, APP for the State.

CORAM: V.M.KANADE,J.
DATE: 25th April, 2005

P.C.:

1. Petitioners are challenging the order of issuance of process passed by the Metropolitan Magistrate on a complaint filed by respondent No.2 under section 138 of the Negotiable Instrumnts Act.

2. It is submitted by the learned Counsel appearing on behalf of the petitioners that the complainant is neither drawee of the cheque nor is the partner of the drawee or holder in due course and, therefore, was not entitled to file the present complaint. It is

submitted that the complaint is filed by the complainant in his individual capacity. It is submitted that the cheque was issued by the Papco Investments Corporation who is the drawee of the cheque. It is submitted that the complainant is not the partner of Papco Investments Corporation.

3. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of the petitioners. From the perusal of the complaint, it can be seen that there is a specific averment in para 1 that respondent No.2 as the Chief Executive of M/s Papco Investments Corporation was authorized to file complaint against the accused and, accordingly, the said complaint was filed. In para 9 of the complaint, there is specific averment that accused Nos. 2, 3 and 4 are the Directors of the Company and that the accused No.2 is the Managing Director of the Company and the cheques have been signed by him. It is further stated that the agreement was signed by accused Nos. 2 and 3. Thus, being the Chief Executive of the Firm and being authorized to file the complaint, the complainant Kamal Mohan Bhatiya was virtually the payee himself. The contentions of the learned Counsel appearing on behalf of the petitioners, therefore, cannot be accepted.

4. Accordingly, all the above three Criminal Applications are dismissed.

V.M. KANADE, J.